

OCTOBER 25, 2011

CITY OF TRINIDAD  
TRINIDAD, COLORADO

The City Council of the City of Trinidad, Colorado met in Special Session on Tuesday, October 25, 2011 immediately following work session at 1:30 p.m. in City Council Chambers at City Hall pursuant to the following call:

CITY OF TRINIDAD  
TRINIDAD, COLORADOSPECIAL MEETING

There will be a Special Meeting of the City Council of the City of Trinidad, Colorado, on Tuesday, October 25, 2011 immediately following work session at 1:30 p.m. in the Council Chambers at City Hall

The following item is on file for consideration of City Council:

- 1) Resolution of the City of Trinidad, Colorado, (i) declaring the City Council's opposition to any attempt by the Arkansas River Power Authority ("ARPA") to assess upon the City the costs of any premiums resulting from ARPA's poor creditworthiness; (ii) directing the City's representatives on the ARPA Board to oppose the imposition of any such costs upon the City; and (iii) directing the City's Power & Light Department to carefully monitor any further attempted increases passed on by ARPA, to ascertain the cost of any cost imposition related to ARPA's poor creditworthiness, and to withhold and escrow any such costs from payments made by the Trinidad Power & Light Department to ARPA

The meeting was called to order at 2:10 p.m.

There were present:	Mayor	Garduno, presiding
	Councilmembers	Aragon, Pando, Rino, Shew, Toupal
Also present:	City Manager	Gil de Rubio
	City Attorney	Beatty
	City Clerk	Garrett
Absent:	Councilmember	Velasquez

Resolution of the City of Trinidad, Colorado, (i) declaring the City Council's opposition to any attempt by the Arkansas River Power Authority ("ARPA") to assess upon the City the costs of any premiums resulting from ARPA's poor creditworthiness; (ii) directing the City's representatives on the ARPA Board to oppose the imposition of any such costs upon the City; and (iii) directing the City's Power & Light Department to carefully monitor any further attempted increases passed on by ARPA, to ascertain the cost of any cost imposition related to ARPA's poor creditworthiness, and to withhold and escrow any such costs from payments made by the Trinidad Power & Light Department to ARPA. City Manager Gil de Rubio addressed Council and pointed to the resolution before them and said as most of them know, the resolution is a hard-hitting resolution. It summarizes where all the member cities, including Trinidad, sit right now at the crossroads with ARPA. The well-documented and well-publicized aspect of the Lamar Repowering Project overshadows a real situation when it comes to the purchase of outside power. He reminded Council that as the resolution states MEAN (Municipal Electric Association of Nebraska) has been providing ARPA with outside power purchases for several years. Last November MEAN sent a letter to ARPA's administration that come February, 2012, they will no longer provide power to ARPA cities. Immediately following news of that letter, the City of Trinidad started inquiring at the monthly ARPA meetings about ARPA's responsibility in going out for outside power. City Manager Gil de Rubio said over the last 12 months, but especially over the last six to eight months ARPA has, in his opinion, really sat on their heels in trying to access power. They finally are trying to access power and have come to a point of negotiating with two wholesale providers. City administration's impression is that there may be some additional charges carried with this outside purchase contract because of ARPA's delinquent payments to MEAN. That presents a dilemma to ARPA members – where will they get the money to pay the additional charges? The City can get outside power without those charges at a very lucrative and competitive rate. Right now the market is key to long-range power contracts. Raton just signed a 10-year agreement with Enserco at \$.063 per kWh. He concluded that Nan Winter is here today to address City Council. She has put together a Power Point presentation to outline the reasons why it is recommended that Council endorse this resolution. He reminded Council of the monthly ARPA meeting this Thursday at 10:00 a.m. at Mt. Carmel in Trinidad. He said if Council chooses to endorse the resolution it will be presented to the ARPA Board this Thursday. Nan Winter, from the law firm of Stelzner, Winter, Warburton, Flores, Sanchez & Dawes from Albuquerque, New Mexico, addressed Council. She reminded Council that their firm helped Raton, New Mexico, get 'divorced' from ARPA. She confirmed that Raton is now in the market, they procured, did an RFP for power so they have a good sense of the market for electric energy. She reminded Council that her firm has been handling the litigation between Trinidad and ARPA. It is just now jump-starting. The City has been successful in defeating half a dozen ARPA motions to dismiss the case, dismiss counsel in the case, and to move the case to Lamar. The local judge has looked favorably on all of Trinidad's motions and the litigation is still pending right here in Trinidad. Trinidad has had very good success in courts locally. That is positive and it keeps the pressure on ARPA. Because the litigation is heating up and because the judge has encouraged them, Ms. Winter said they've put some settlement options together that they will proposed to ARPA. She said ARPA is looking to Trinidad for options to resolve this litigation. In fact, ARPA's counsel contacted her office in the last week and suggested that if we throw out our litigation they'll talk settlement with Trinidad. This litigation is obviously very troubling for them. Ms. Winter showed Council a Power Point presentation that she said runs down where we are and where we might consider going with ARPA, or where ARPA might consider taking ARPA. She said ARPA has a problem and it's not news to Trinidad or Raton, but still ARPA doesn't get it. We've seen the CAMU surveys – the six member cities of ARPA are the last names on the list of municipal rates. Out of 171 cities, Trinidad was 171 in terms of electric rates. Ms. Winter said the LRP (Lamar Re-Powering Project) doesn't work

and can't work. ARPA can't bring it into compliance. LRP is \$100 million over budget. Trinidad and all of the member municipalities have blessed multiple bond issues with respect to this Lamar Project. In 2006 and 2007 when the project was first considered, ARPA projected the power cost to be \$0.05 kWh, but it is now \$0.18 kWh. The rate jumps all over the place because most of the time the plant just doesn't run. If they could actually get a running history with the plant it might actually bring the rates down, but the fact of the matter is that so long as it doesn't run we'll always be looking at \$0.11 or \$0.18 power out of that utility. The costs are unknown, they still don't have environmental compliance, they don't know what the cost is to fix it, there's been constant shut downs, mishaps, trips. The litigation and environmental oversight will continue. There are no off-system sales – they can't sell to anyone because it doesn't produce. Also, the economy stinks everywhere. Ms. Winter said that ARPA members were put on notice that because of ARPA's poor credit rating, ARPA can only procure for outside energy if the wholesaler gets a security deposit. That wasn't the case before. She said the significance of that is that Trinidad joined ARPA because there were synergies and economies of scale and collectively the members had good things happening. Now, collectively power suppliers are saying they are not going to sell to ARPA unless they are given a security deposit. Those security deposits are running anywhere from \$1 to \$2 million. The economies of scale and the synergies associated with joint procurement by municipalities have disappeared, evaporated. The member cities are now paying a premium to belong to ARPA. Forget the plant - the outside providers want extra to sell you energy, she said. We still don't know if LRP is ever going to be reliable. What is the cost of environmental compliance? It is still unknown. When will their next catastrophic failure occur? It is hard to know. The last time they heard was December, 2010. They still don't have it operating. If they finally do get it operating she wonders what will trip. Ms. Winter said in looking at ARPA's books they didn't see any funding in ARPA's budget for routine overhauls or maintenance. They are just dealing hand to mouth. It is crisis to crisis. She reiterated that there are zero off-sales dollars which means that every projection they provided the City when they sold the bond issues in 2006, 2007 & 2008 is worthless because there's no off-system sales and they relied on off-system sales. The proformas attached to the back of the official statements that authorize bonds for LRP are junk. There's almost no truth in them. There are no off-system sales and the price of energy coming out of Lamar is sometimes triple what they projected in 2006 and 2007. She pointed to a comparison of the operating report from January, 2010 with the official statement on the 2010 bond issue coming out of Lamar. Everything shown is from one document or another. Ms. Winter reported that ARPA members need 277 million kWh per year. ARPA told Trinidad that in August, 2011 the cost of LRP was \$0.12 to \$0.13. In December, 2010, ARPA told Trinidad the cost of LRP was \$0.18. The only thing that saved the City from getting gouged every month was that ARPA was buying power in the spot market from MEAN and spot market energy is very cheap right now at \$0.03 to \$0.04. She explained that when you blend together that spot market price with the Lamar power it makes it almost reasonable for Trinidad, adding that for everyone else it is still a hefty price. Blending it brings it to \$0.12 to \$0.13 for Trinidad. She pointed to the double and triple asterisk mark notations and explained that the debt service if you don't include the 2010 bond issue is \$0.03. Within the Lamar \$0.18 rate, \$0.03 is the debt and the rest of it is those 48 full-time employees, dealing with catastrophic failures, operations and maintenance, and overhead. A huge part of the cost of Lamar is not debt, it is everything else. The debt service without the 2010 bond issue is just about \$0.03. She reminded Council that Trinidad did not authorize ARPA to go out and do the 2010 bond issue. ARPA asked for authorization for the 2006, 2007 and 2008 bond issues, but not the 2010 bond issue. She said their legal position is that Trinidad is not responsible for it. She reminded that ARPA's number was \$.116 for August, 2011, no guarantees. It could get worse or it could get better, but again there are no guarantees. Trinidad has been in this uncertain situation for four or five years at this point. Ms. Winter said she broke out the \$0.11 energy cost: Wind - \$0.03; WAPA - \$0.028; LRP - \$0.13; spot purchases - \$0.03; debt service plus extra costs for scheduling, administration, general expenses and transmission account for the remainder. Even ARPA admits that it is \$0.116. She added that just to give Council an idea of what is spent on spot and LRP – if you were procuring 240 million kWh at the rate ARPA is now charging it would cost \$30 million for energy in a year – their numbers. If they manage to bring LRP down to \$0.09, they'd still be paying \$21 million. She reminded that Trinidad has a 20% share of this number because Trinidad is the third largest taker on ARPA's system. If ARPA were procuring all of those needs on the open market right now, that \$20 to \$30 million would go down to \$9 to \$14 million. She said her point is that Lamar has totally out-priced itself. Even at the \$0.06 Raton is procuring for, ARPA is still in better shape to just shut down the plant. She said the good news is that Trinidad still has good credit, as do the rest of the ARPA members. If Trinidad were to procure outside power there would be no security deposit, from what they are hearing. They are only getting hit with a security deposit right now because ARPA can't pay its bills. The spot market is at \$0.03 right now. She clarified that she didn't want to confuse spot with what Raton did. Raton locked in a rate at \$0.06 for ten years. If Raton were buying today they'd get \$0.03, but they think like Trinidad probably does in that as City Council members they have people to take care of and so they want certainty. Even though the spot market is less, you need certainty for ten years from now so you're not always affected by what happens in the Middle East. Raton pulled in a couple of legitimate responses and got contracted for \$0.06 power. Despite the coal issues and environmental issues, there are other coal plants and other plants coming on-line every day west of the Mississippi. She pointed out that a big plant was brought on-line in Pueblo less than one year ago. She estimated that power may be what is helping bring the spot down so much. The bottom line is Trinidad can still be proactive but it will take some nerve. She said she brain-stormed four options, options available to ARPA collectively, and options available to just Trinidad. She explained that looking at the official statements and operating report numbers it seems pretty clear that if ARPA didn't have LRP things wouldn't be as rough as they are. The first option is for all of ARPA's members collectively. She said hopefully ARPA can come to the understanding that if they dissolve and allocate the debt they have today and possibly reorganize and shut down the plant, it would still be cheaper than keeping the plant operating. That's the bigger picture. Shut down ARPA, mothball the plant and each city take its fair share of the debt and move on. Another option is an ARPA solution not specific to Trinidad to deal with the current crisis and the security deposit. They could amend the Organic Contract and Power Sales Agreement to allow each member to procure power independently. The members are bound by their agreements now to allow ARPA to procure for them. ARPA would have to be willing to amend its own formation documents to allow the cities to procure independently. It gets power to customers cheaper by about 20%. The next option specific to Trinidad, if ARPA wants to resolve the litigation and to recognize they didn't come to Trinidad for permission to go into debt in 2010, is for Trinidad to propose an amendment to those contracts to allow Trinidad to procure on its own and let the others stick it out with Lamar. Trinidad could agree to take its fair share of the debt, all but the 2010 debt, and then Trinidad would not be responsible for LRP. The other members could take risk into the future if they choose. The fourth option is that any member recognize what the Organic Contract tells you – it is not your debt. It is ARPA's debt. The documents say it. You don't have to take this debt. That fourth option says that all the contracts say it is not my debt and I'm going to walk away. She opined that is the bravest position to take - ignore the contracts and procure on your own. The problem the City might face in the future is if the City would get a bill from ARPA and from Enserco. But, it is not your debt and that is the deal struck when Trinidad entered into this arrangement with

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ARPA. In all fairness, Ms. Winter said the City didn't agree to a plant that this one is or agree to pay security deposits resulting from ARPA not paying its bills. She said those are the options and she hoped to meet with ARPA in the next days and weeks to at least point out that they have options too. They don't have to inflict additional harm on to their other members. She said she's wondering if they have looked at them and why they haven't looked at them. There are some pain-free options - simply amend the contracts to agree to allow each municipality to procure on its own. That would be the easiest. She said they are a tough group to communicate with. But, they still own a plant that they have absolutely no control over. Councilmember Rino asked what the best scenario is if the City is successful in the lawsuit. What is the City's financial responsibility for the bonded indebtedness? Is it \$20 million per City? Ms. Winter answered that the lawsuit asks that the court find that the City should not be responsible for any part of Lamar at all - none of the debt because the City's first claim is that ARPA misrepresented from day one what they would give the City. That would be best case scenario, up to a judge and a jury. But, she said she thinks more clearly the City didn't agree to the 2010 debt. None of the members did and for whatever reason ARPA always sought the members' permission to go into debt in the past, but not this time. So there's a potential middle ground where Trinidad is still stuck with Lamar Repowering Project, but is not responsible for the last issuance of debt which was about \$20 million. She said it's up to about \$149 million then. Ms. Winter said they have asked the court to recognize that what was promised and sold and what Trinidad was asked to sign up for didn't come to pass. It was an awfully long time ago and millions and millions of dollars. There is always the risk that the court says Trinidad said yes ten times and we're going to make you pay for it. Councilmember Rino asked if when the cities voted to go up to the \$150 million if it didn't make us responsible for that debt. Ms. Winter said it would, assuming ARPA was telling the City the truth. But if they were not honest or were so negligent with their presentation of the facts, the City can't be held responsible. She compared it to buying a lemon car. LRP hasn't kept their promises on this. What they are asking the court to determine is at what point were they not keeping their promise that they were going to deliver this plant, operating 24/7 at \$0.05. Councilmember Pando asked Ms. Winter if she is suggesting the City go through with the lawsuit or attempt to settle. Ms. Winter answered that whenever there is any litigation the court will compel at least a discussion of settlement. We are at that point. The judge has already hinted discussions should take place and she's already told us in hearings that by December she will probably order mediation anyway. It is just part of the process in any litigation. The judges will always encourage settlement. Correspondence has been going on from ARPA's counsel. We are at the stage of let's see who blinks first. She said they received a letter a couple of weeks ago that said if Trinidad dismisses its lawsuit ARPA will talk settlement. She said that had to be the goofiest thing she ever saw on a piece of paper. With the lawsuit Trinidad has incredible leverage and ARPA is struggling at every level of their business - financially, environmentally, with the litigation, with Lamar, with warranties. This litigation is creating issues. She said her guess is that they are probably in the market for more money yet again. We are at that point where they can visit with ARPA. She said they've had a chance to look at all the numbers and she thinks there are options and would like to present them. To that end, City Manager Gil de Rubio has asked for time with ARPA on its board on Thursday. She said they will undoubtedly talk settlement and she encouraged Council to talk about it with ARPA. Maybe they will see the wisdom in shutting the plant down or they'll see the wisdom of letting Trinidad out like they did Raton, giving Trinidad the option of procuring on its own. She encouraged Council to let this substantive discussion happen. Mayor Garduno said she understands that ARPA also has options then and asked if at the next meeting Ms. Winter will discuss them with ARPA. Ms. Winter said the options were presented to Council in the Power Point as one and two. She said she doesn't know if they know those options exist, but it is hard to think that they don't know after studying their reports. This is just a ball and chain. Some may be so wedded to the prospect of independence - that's why they went into LRP - to be the controllers of their own destiny. She said she thinks they know it is a problem, but they have to be willing to see that and address it. She and the number guys are looking at the numbers and are thinking if they just shut down this money pit and dish out the debt you might be better off. Mayor Garduno asked if ARPA presented the option or Trinidad. Ms. Winter said ARPA has not identified any options and if they have, they haven't shared them. She added that she'd like to think they know about their options, but even the City's ARPA Board members haven't seen any hint that they do. City Manager Gil de Rubio said the resolution before them basically covers the premise of Ms. Winter's presentation and what he and Ms. Winter have explained to the board. He said he thinks the resolution is very important in that it shows that the Trinidad City Council is stepping forward to say enough is enough - Trinidad pays its bills on time and due to ARPA's mismanagement they have painted themselves in the corner with respect to the purchase of outside power and will have to pay a premium price in a relatively flat market. City Manager Gil de Rubio urged Council to approve and sign the resolution so it can be presented to the ARPA Board this Thursday at 10:00 a.m. He also urged Council members to attend that meeting. Councilmember Rino said his only concern is if they pass the resolution whether they are saying that Trinidad is not responsible for any further indebtedness and are willing to accept the previous indebtedness. City Manager Gil de Rubio said he believes the resolution deals with the payment of outside power and putting any type of security deposits that ARPA may charge the City of Trinidad into an escrow account. Therefore if somewhere down the line the City has to pay it we'll have the funds. The deposits will be hefty, \$1 to \$2 million. Not only does ARPA have to come up with that money, but it affects their budget and also in some cases the loss of revenues that they have projected in their budget. Those losses will trickle down to the members in the ECA in our power bill from ARPA and consequently to Trinidad's utility payers. He reminded Council of his reference to an anticipated \$170,000 net income in the Power & Light Department which is with a 3% increase in ARPA's base rate. That's what ARPA's current budget signifies, but it can be a lot higher. Somewhere we have to say enough is enough and draw the line in the sand. This resolution is a formidable tool for doing that. Councilmember Toupal asked Ms. Winter if she encourages Council to approve the resolution. Ms. Winter answered that she feels it is a very useful tool for settlement discussions with ARPA. Councilmember Shew commented that from his observations being on the ARPA Board, he and City Manager Gil de Rubio have talked to the Board at times in the past about shutting down ARPA but they still want to fix the plant no matter the cost. Their idea is sell it when it gets fixed. The problem is getting it fixed and they have so many problems. They bring \$200,000 bills for a part from France to fix a dome that should have been fixed in the original contract, for example, and they keep doing that. The cost keeps elevating. Their profit and cash flow is really down. He said City Manager Gil de Rubio has raised that concern - how they are going to pay a security deposit when their cash flow keeps going down. Their answer is with the ECA. Rick Rigel told them at their last meeting that the plant can't operate any better than at 75%. Councilmember Shew opined that there's no way it'll get any better unless they make some drastic changes and that's a big concern because they'll be asking for more money in an upcoming meeting to redo the pollution system or catalytic converter. ARPA is still negotiating with B&W. Nothing seems to be working. He told Council that if they attend a meeting they'll see that several of the members are still determined to fix the plant. They seemingly don't care what the cost is. He said he doesn't know how their towns get away without arguments about their utility bills and questioning them like Trinidad has seen. He added that the plant only works on one shaft and it could break down. They haven't seemed concerned about going out for outside power. Rick Rigel told them he'd get MEAN to provide and MEAN had already said

they wouldn't supply to ARPA again. Ultimately MEAN told Mr. Rigel they'd be shutting the power off to ARPA and so now ARPA is scrambling with two companies to negotiate. He surmised that those are his observations. He said he understands they want to continue with the plant because they have money invested too, but he said he just doesn't see any way that it will work. Councilmember Rino asked if there are any other cities that are skeptical about staying with ARPA or is it just Trinidad. Councilmember Shew said there have been a couple who have talked to the City about looking into it and are real serious about doing something – Holly and Las Animas. La Junta and Lamar are the ones who would lose the most by shutting the plant down because of the employment, etc. He reiterated the problem with obtaining key parts from Belgium, Germany, and having to get parts from France for a dome that they keep the coal in. They still haven't found a solution to the environmental compliance. He concluded that he hoped Council could attend the meeting because it'd be the best way to see and ask questions. Mayor Garduno commented that based on everything they've heard today she thought the resolution was a good step. City Attorney Beatty recommended a few minor revisions. The first was to remove the second 'cost' in the title under '(iii)' and to correct the font size so that it is uniform throughout the resolution. Councilmember Rino made a motion to adopt the resolution with the corrections. The motion was seconded by Councilmember Shew and carried by a unanimous roll call vote of Council members present. The resolution was adopted.

## RESOLUTION NO. 1372

RESOLUTION OF THE CITY OF TRINIDAD, COLORADO, (I) DECLARING THE CITY COUNCIL'S OPPOSITION TO ANY ATTEMPT BY THE ARKANSAS RIVER POWER AUTHORITY ("ARPA") TO ASSESS UPON THE CITY THE COSTS OF ANY PREMIUMS RESULTING FROM ARPA'S POOR CREDITWORTHINESS; (II) DIRECTING THE CITY'S REPRESENTATIVES ON THE ARPA BOARD TO OPPOSE THE IMPOSITION OF ANY SUCH COSTS UPON THE CITY; AND (III) DIRECTING THE CITY'S POWER & LIGHT DEPARTMENT TO CAREFULLY MONITOR ANY FURTHER ATTEMPTED INCREASES PASSED ON BY ARPA, TO ASCERTAIN THE COST OF ANY IMPOSITION RELATED TO ARPA'S POOR CREDITWORTHINESS, AND TO WITHHOLD AND ESCROW ANY SUCH COSTS FROM PAYMENTS MADE BY THE TRINIDAD POWER & LIGHT DEPARTMENT TO ARPA

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There being no further business, the meeting was adjourned.

ATTEST:

  
AUDRA GARRETT, City Clerk

  
JENNIE GARDUNO, Mayor